

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

LEAH FLORES, an individual,

Plaintiff,

v.

TAPESTRY GIRLS LLC, a Michigan
limited liability company;

Defendants.

Case No.: 1:23-cv-00949

**COMPLAINT
DEMAND FOR JURY TRIAL**

Plaintiff LEAH FLORES (“Plaintiff”) by and through her undersigned counsel, hereby complains against Defendant TAPESTRY GIRLS LLC (“Tapestry Girls”), a Michigan limited liability company, and allege as follows:

NATURE OF THE ACTION

1. Plaintiff is an artist, designer, and illustrator who creates and obtains rights to her derivative works, which are transacted primarily in and through the visual art and home good industries. Plaintiff owns these artworks in exclusivity and exploits these designs for profit by selling products bearing the designs or entering into licensing agreements for sale or display by third parties. Tapestry Girls has knowingly and intentionally used at least one such artwork in the production of unauthorized goods which infringe Plaintiff’s copyrights.

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction over Plaintiff's federal claims arising under the Copyright Act of 1976, Title 17 U.S.C., § 101 et seq. under 28 U.S.C. § 1331, 1338 (a) and (b).

3. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. 1332(a)(1), in that this is a civil action between citizens of the State of Oregon and citizens of the State of Michigan, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. This Court has personal jurisdiction over Tapestry Girls because Tapestry Girls is incorporated in Michigan.

5. Venue is proper in the United States District Court for the Western District of Michigan Southern Division pursuant to 28 U.S.C §§ 1391(b), 1391(c), and 1400(a) on information and belief that: (a) this is a judicial district in which a substantial part of the events giving rise to these claims occurred; and (b) this is a judicial district in which Tapestry Girls resides.

THE PARTIES

6. Plaintiff is an individual residing in Oregon.

7. Plaintiff is informed and believes, and thereon alleges, that Tapestry Girls, is, and at all times relevant herein was, a limited liability corporation with its registered office located at 405 W. Greenlawn Ave. #G11, Lansing, Michigan 48910. Tapestry Girls is incorporated and registered to do business in Michigan. Plaintiff is informed and believes, and thereon alleges, that Tapestry Girls manufactures, distributes, prints, and ships products to consumers throughout the United States, including consumers within this Court's jurisdiction.

PLAINTIFF’S COPYRIGHT

8. Plaintiff is a professional artist who regularly sells, licenses, or otherwise exploits her artwork to clients and third-party retailers.

9. Plaintiff has expended considerable resources and efforts in creating, developing, and marketing her artworks, which are essential to her business.

10. Plaintiff owns, and had owned prior to the infringing acts complained herein, the copyright to the artwork designated as follows:

- “Crash into Me” (the “Artwork”)



11. The Artwork was first published in January of 2014 and is registered with the United States Copyright Office as registration No. VA 2-143-907.

12. On or about January 23, 2014, Plaintiff began advertising, displaying, and selling the Artwork in commerce throughout the United States including, but not limited to Plaintiff’s website, *leahflores.com*, on her social media pages, and through authorized third-party retailers.

13. The Artwork is unique and distinctive in the marketplace, such that it indicates that its source is Plaintiff Leah Flores. Indeed, Plaintiff has licensed, sold, and otherwise exploited the Artwork, as part of Plaintiff’s unique brand, for almost a decade on various platforms. Plaintiff has derived substantial profits and income

from such sales and exploitation, as the Artwork is one of Plaintiff's most recognized and popular artworks.

14. For instance, the artwork is distinguished in commerce by:
 - a. Orange tones of the sky extending from the horizon of the sea
 - b. White caps rising from the sea
 - c. The white caps breaking against a brown sandy beach.

DEFENDANT'S INFRINGING CONDUCT

15. Upon information and belief, Tapestry Girls owns and operates the-ecommerce service website *tapestrygirls.com*, and is in the business of commercially manufacturing, printing, distributing, and shipping a variety of items.

16. In or around March of 2021, Plaintiff first discovered that Tapestry Girls was manufacturing and/or selling products bearing her Artwork (the "Infringing Product"). Upon information and belief, Tapestry Girls was selling, marketing, and advertising the Infringing Product on websites including *www.tapestrygirls.com*—a website owned and operated by Tapestry Girls.

17. Indeed, the Infringing Product bears an image that is *identical* to the Artwork, such that it is confusingly similar to Plaintiff's Artwork, and is likely to cause confusion in the marketplace.

18. A true and correct copy of a screenshot of the Infringing Product offered for sale on *tapestrygirls.com* is attached hereto as **Exhibit A**. Additionally, true and correct copies of screenshots of Tapestry Girls posting and promoting the Infringing Product on various platforms, including Facebook and Pinterest, are attached hereto as **Exhibits B and C**, respectively.

19. Tapestry Girls had access to Plaintiff's Artwork through her website *www.leahflores.com*, as well as through a number of popular, licensed vendors and retailers that Plaintiff contracts to work with, including, but not limited to, Target and Urban Outfitters.

20. Upon information and belief, Tapestry Girls was, without Plaintiff's authorization, unlawfully reproducing, manufacturing, distributing, and/or selling the Infringing Product in this judicial district that feature artwork that is identical to, or substantially similar to, the Artwork.

21. Tapestry Girls has exhibited a consistent pattern of bad faith conduct and willful blindness regarding infringement of Plaintiff's Artwork. Indeed, over two years later, Tapestry Girls continued to willfully infringe on and profit from Plaintiff's Artwork.

22. On or about May 23, 2023, Plaintiff, through her counsel, addressed a letter to Tapestry Girls to inform Tapestry Girls of the Infringing Product. Plaintiff demanded, among other things, that Tapestry Girls immediately cease and desist from using, copying, reproducing, shipping, distributing, ordering, purchasing, manufacturing, offering for sale or advertising the Artwork in any way, and to order all those who Tapestry Girls knows or suspects are using the Artwork to cease and desist such conduct (the "March 23rd Letter"). Specifically, Plaintiff notified Tapestry Girls of the Infringing Product made by Tapestry Girls that was found and sold on both Tapestry Girls' website, as well as *Walmart.com*, and demanded that Tapestry Girls cease and desist such conduct.

23. Although Plaintiff requested a response by June 2, 2023, Tapestry Girls failed to respond and continued its unauthorized use of the Artwork by continuing to list the Infringing Product on the Tapestry Girls website.

24. As a result, on or about June 22, 2023, Plaintiff, through her counsel, addressed a second letter to Tapestry Girls informing Tapestry Girls of its failure to oblige with the previous correspondence by, *inter alia*, removing the Infringing Product from its website. Plaintiff reaffirmed its demand that Tapestry Girls immediately cease and desist from using, copying, reproducing, shipping, distributing, ordering, purchasing, manufacturing, offering for sale or advertising

the Artwork in any way, and to order all those who Tapestry Girls knows or suspects are using the Artwork to cease and desist such conduct (“June 22 Letter”).

25. The Infringing Product contains artwork that is identical to Plaintiff’s Artwork, or contains artwork that is substantially similar to Plaintiff’s Artwork, such that it was clear that the artworks belonged to the same copyright holder.

26. As of the date of this filing, Tapestry Girls has failed to respond to either of the letters sent by Plaintiff through her counsel, and has failed to provide the information requested for the Infringing Product, including, among other things, sales records.

27. At all times, Tapestry Girl’s use of the Artwork and listing of the Infringing Product was unauthorized by Plaintiff.

28. Upon information and belief, Tapestry Girls’ infringing use of the Artwork is not limited to the Infringing Product described above. All of the Infringing Products contain artworks that are identical to Plaintiff’s Artworks, or contain artworks that are substantially similar to Plaintiff’s Artworks, such that it was clear that the artworks belonged to the same copyright holder.

COUNT ONE: COPYRIGHT INFRINGEMENT
(AGAINST ALL DEFENDANTS)

29. Plaintiff hereby realleges and incorporates by reference herein each and every allegation in the preceding paragraphs as though fully set forth herein.

30. Plaintiff is informed and believes, and thereon alleges, that Tapestry Girls infringed Plaintiff’s copyrights by creating, making and/or developing directly infringing and/or derivative works from the Artwork and by producing, distributing and/or selling the Infringing Product.

31. Due to Tapestry Girls’ acts of infringement, Plaintiff has suffered substantial damages to her business in an amount to be established at trial.

32. Due to Tapestry Girls' acts of copyright infringement as alleged herein, Tapestry Girls have obtained direct and indirect profits Tapestry Girls would not otherwise have realized but for Tapestry Girls' infringement of the Artwork. As such, Plaintiff is entitled to disgorgement of Tapestry Girls' profits directly and indirectly attributable to Tapestry Girls' infringement of the Artwork in an amount to be established at trial.

33. Plaintiff is informed and believes and thereon alleges that Tapestry Girls has imported, manufactured, printed, caused to be manufactured and/or sold the Infringing Product.

34. Upon information and belief, Tapestry Girls also began such activities although Tapestry Girls was fully aware of Plaintiff's superior rights to the Artwork. Plaintiff is also entitled to preliminary and permanent injunctive relief.

COUNT TWO: FEDERAL FALSE DESIGNATION OF ORIGIN –
VIOLATION OF THE LANHAM ACT § 1125(a)
(AGAINST ALL DEFENDANTS)

35. Plaintiff hereby realleges and incorporates by reference herein each and every allegation in the preceding paragraphs as though fully set forth herein.

36. Tapestry Girls deliberately created the false impression that the Infringing Product originates from Plaintiff, when in fact, it bears no connection to Plaintiff whatsoever.

37. The Artwork, as sold, licensed, and otherwise exploited by Plaintiff, is readily recognized and has become well known among customers, other artists in the industry, and the general public by reason of Plaintiff's extensive use of the Artwork, through sales, licensing agreements, and other means of exploiting the Artwork.

38. The Artwork was inherently distinctive when first created by Plaintiff, or alternatively acquired secondary meaning and distinctiveness prior to Tapestry

Girls' entry into the marketplace using an image *identical* to the Artwork on the Infringing Product.

39. Commercial usage by Tapestry Girls of the Artwork is likely to cause confusion, mistake, and deception in the minds of purchasers, members of the trade, as well as members of the general public relative to Plaintiff's goods, Plaintiff's commercial activities, Plaintiff and the correct source of Tapestry Girls' goods.

40. Existing and potential customers, members of the trade, as well as members of the general public upon observing or reacting to Tapestry Girls' usage of the Artwork will likely believe there is a sponsorship, affiliation, association, licensing and/or other business connection between Plaintiff and Tapestry Girls.

41. By using the Artwork, Tapestry Girls' have passed off their goods as Plaintiff's goods.

42. Due to Tapestry Girls' conduct, Plaintiff has suffered substantial damages to her business in an amount to be established at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands the following relief against Tapestry Girls with respect to each claim for relief:

With respect to all Defendants, and each of them, as to Count One:

1. That Tapestry Girls, Tapestry Girls' agents and servants be enjoined from selling the Infringing Product or otherwise infringing Plaintiff's copyrights in the Artwork;
2. That Plaintiff be awarded all profits of Tapestry Girls plus all losses of Plaintiff in connection with Tapestry Girls' infringement of the Artwork, the exact sum to be proven at the time of trial,;

3. Directing such other relief as the Court may deem appropriate to prevent Tapestry Girls from participating in these or other copyright infringements.
4. For compensatory damages, in an amount to be proven at trial but above the jurisdictional limit.
5. For exemplary and/or punitive damages
6. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

DATED: September 7, 2023

NOVIAN & NOVIAN, LLP

By: /s/ Michael O'Brien

Michael O'Brien

ATTORNEYS FOR PLAINTIFF

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable pursuant to Fed. R. Civ. P. 38.

Dated: September 7, 2023

NOVIAN & NOVIAN

By: /s/ Michael O'Brien
MICHAEL O'BRIEN

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2023, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the court and that all parties requesting electronic notification have been notified by the Court.

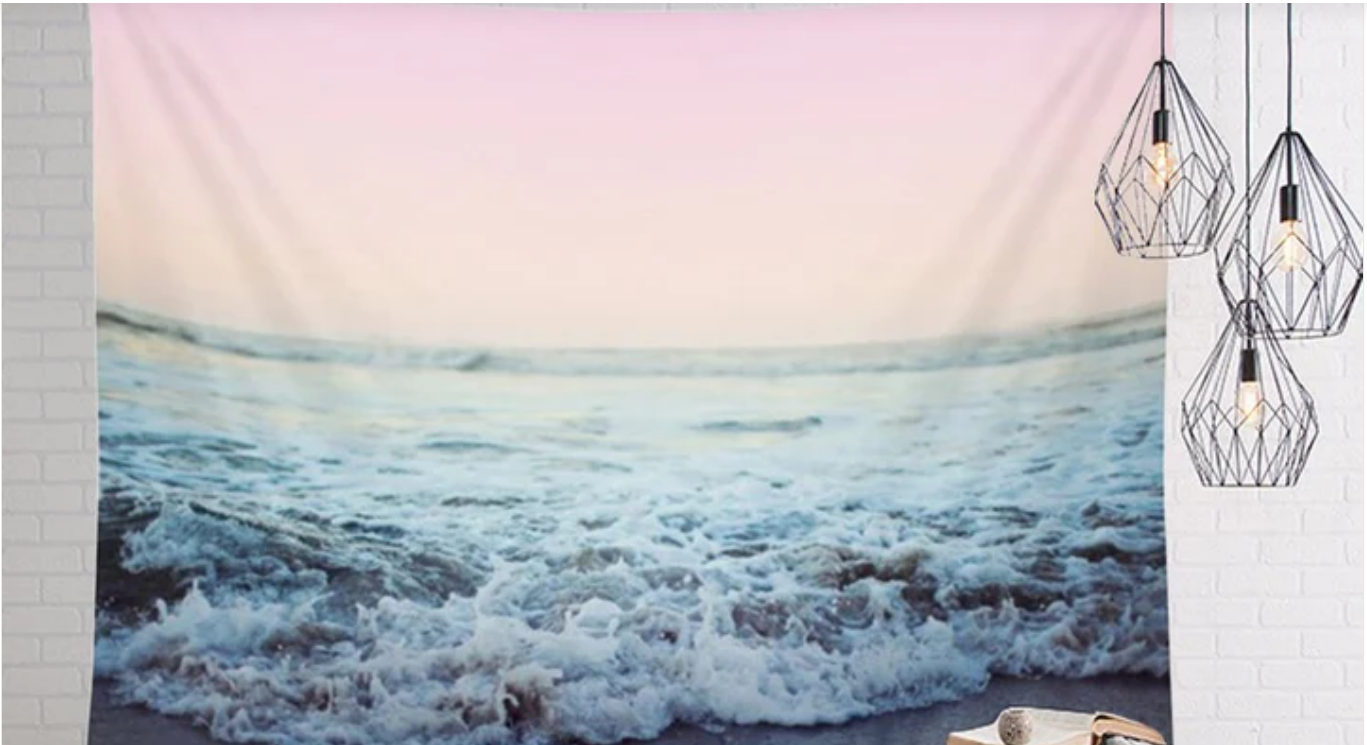
By: /s/ Michael O'Brien
MICHAEL O'BRIEN

EXHIBIT A

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AESTHETICS



Beach Views Tapestry

Size

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100%

of reviewers would recommend this product to a friend

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3 Stars	0
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Guest

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Love this one!

I recommend this product

Was this helpful? 0 1

KN

Kristen N.

over 2 years ago

Love the colors

Can't say enough about it!

I recommend this product

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EXHIBIT B

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8.2K

81 comments 1.1K shares

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EXHIBIT C

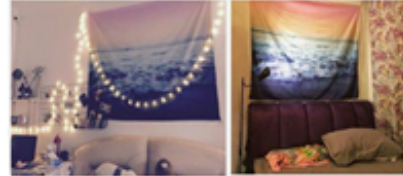
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Scenery Wall...



Ocean Sea Wave Tapestry,
Blue...
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Blue Ocean Waves, Sailboat...
Society6

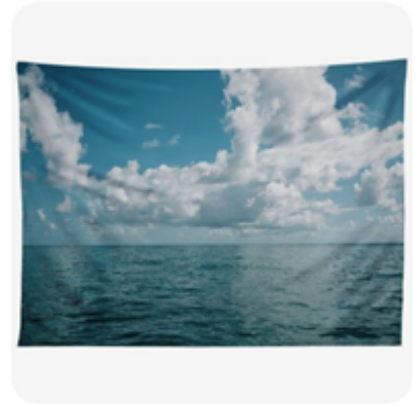
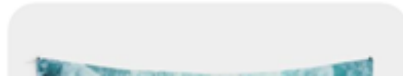


Beach Views Tapestry



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Tapestry Girls

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Bethany Young Photography
Hawaiian Ocean View Tapestry-
50" x 60" - Society6



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